

No. 840.

IN THE
UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

G. W. ROBERTS,

Plaintiff in Error,

vs.

PACIFIC AND ARCTIC RAILWAY
AND NAVIGATION COMPANY,
AND
BRITISH COLUMBIA YUKON
RAILWAY COMPANY,

Defendants in Error.

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UPON WRIT OF ERROR TO THE CIRCUIT COURT OF THE UNITED
STATES, FOR THE DISTRICT OF WASHINGTON,
NORTHERN DIVISION.

Supplemental Brief of Defendants in Error.

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STATEMENT OF FACTS.

Since preparing our brief in this cause, we have discovered other authorities and comments which have an important bearing upon the removal question at issue, and we desire to call the Court's attention to these cases, so

that the matter may be presented with all the light that can be thrown upon it.

The case of *Balin et al. vs. Lehr et al.*, 24 Fed. 193, was a suit between a citizen of New York and of New Jersey as plaintiff, and a citizen of Maryland and of Prussia as defendants. The Court there held that under the statute the cause was clearly removable to the Circuit Court,

In the Law Notes of November, 1901, will be found a very interesting comment upon this question, and upon the decision of Judge Hanford. The editor's views are such a strong presentation of the question that a full reading will be of great profit. Then again the principle is so fully commented upon that it shows a careful and comprehensive study of the question, and is therefore a worthy compliment upon the carefully considered opinion of Judge Hanford. We quote in part from the editor's comments:

“Several cases decided by the United States Supreme Court have, in our opinion, a legitimate bearing on this question. Section 687 of the United States Revised Statutes provides that ‘the Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature where a State is a party, except between a State and its citizens, or between a State and citizens of other States or aliens, in which latter cases it shall have original but not exclusive jurisdiction.’ It will be observed that a controversy between a State as plaintiff against another State together with a citizen of the latter ‘does not come within any of the provisions of the statute,’ and is a *causus omissus*, using

the language of the text writer above quoted. Moreover, such a controversy is one over a part of which the Supreme Court is given exclusive jurisdiction and over the other concurrent jurisdiction. Nevertheless in *Missouri v. Illinois et al.*, 180 U. S. 208, the Supreme Court held that it had jurisdiction of a suit by a State against another State and a corporation of the latter State. A demurrer for want of jurisdiction was overruled, and it does not appear that the court or counsel suggested an objection that such defendants could not be joined where there was a joint interest. *South Carolina v. Georgia*, 93 U. S. 4, was a suit in equity brought in the Supreme Court whereby the State of South Carolina sought an injunction to restrain the State of Georgia, the United States Secretary of War, the Chief Engineer of the United States Army, their agents and subordinates, from obstructing the navigation of the Savannah River, and the court assumed jurisdiction thereof, but dismissed the bill on the merits. *Louisiana v. Texas*, 176 U. S. 1, was a suit brought in the Supreme Court by the State of Illinois against the State of Texas, her governor and her health officer. Here again it may be observed that the court did not decline jurisdiction, but exercised it in holding that the facts alleged in the bill did not justify the court in granting the relief sought. The cases of *New Hampshire v. Louisiana* and *New York v. Louisiana* ~~were suits against the State of Louisiana~~ and the several officers of that State who composed a board of liquidation. The bills were dismissed, but not for want of jurisdiction arising out of the fact that citizens and States were joined as defendants. It seems to us that the clear implication from the foregoing cases strongly supports Judge Hanford."

We have full confidence that this Court will place the broad construction upon this Statute which justice requires, that the purposes for which the law was enacted may not be defeated, to-wit: That all parties to an action may have a fair and impartial tribunal where their rights may be determined.

Respectfully submitted,

JOHN P. HARTMAN,
Attorney for Defendants in Error.

